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Speech for Vic Toews, Q.C.,
Minister of Justice and Attorney General of Canada

Commonwealth Magistrates' and Judges' Association
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Mr. President distinguished Council members, ladies and gentlemen.

On behalf of the Government of Canada, I would like to welcome you to our country and, in particular, to the beautiful city of Toronto. Toronto is a vibrant and cosmopolitan city, and I hope that you will have the opportunity during your stay here to experience much of what it has to offer.

I also want to thank Lord Hope for his kind introduction. I am not sure I recognized the individual you were describing, but I would certainly like to meet him some day.

It is an honour to address such a distinguished audience, and I thank the conference organizers for providing me with the opportunity to do so.

This evening, I want to spend some time talking about the importance of the rule of law. Canada is known for being a stable, peaceful and prosperous nation, and one of the main reasons for that is its dedication to the rule of law.

Our Supreme Court has stated that there are three aspects to the rule of law.

First, everyone is subject to the law—government officials, legislators, judges, businesses and private individuals.

Second, the exercise of any public power must derive from a legal rule—in other words, the relationship between the state and the individual must be regulated by law.

Third, there must be a set of laws that actually exist to order social relations.

If you were to ask people to define the "rule of law," you could be fairly certain that their answers would include some variation of the first two aspects—the principle that everyone is subject to the law and the requirement that state action be consistent with the law.

But what about the third aspect? It almost goes without saying that the rule of law requires that you have an existing set of laws.

In fact, the very existence of a positive set of laws became a live issue in Canada in the not-too-distant past. In a 1985 decision, our Supreme Court found that the Government of the Province of Manitoba—my home province, incidentally—was constitutionally required to enact its legislation in both the English and French languages.

Problem was, the Province had enacted legislation in the English language only since 1890. Therefore, the Court found that most Manitoba legislation—at least on its face—was of no force and effect.

Needless to say, this presented a dilemma. Imagine striking down virtually all of the legislation in a particular jurisdiction. Municipalities, school boards, administrative tribunals, much of government, professional governing bodies—even the courts—would either vanish or have its powers severely limited. There would be very little or no regulation of businesses, the environment, energy or transportation. And because there were no cars in 1890, highway traffic regulation—at least as we know it—would disappear.

What the Court faced was a clash of "rule of law" principles. On the one hand, the Court found the legislature had acted inconsistently with the law, and therefore the legislation that it passed could not be valid. On the other hand, the strict application of this principle would leave a massive legal vacuum and create virtual anarchy in the province.

At the end of the day, the Court decided to suspend its judgment for a set time frame so that the laws of Manitoba could be properly translated.

I mention this case not just because it is an intriguing piece of Canadian constitutional history, but also because it underscores a point I wish to make about the rule of law.

The rule of law, broadly conceived, is not just concerned with what I would call the lawyer's conception of the rule of law—that is, the courts reining in the exercise of arbitrary state power. Rather, it is also concerned with the construction of a stable, prosperous and peaceful society through the enactment of a set of positive laws.

In a democracy, it is largely the task of representative legislatures to establish a legal order that reflects and promotes the values of its citizens.

This leads directly to another point I wish to make—about the role that the rule of law plays in promoting democracy and the democratic process. The rule of law reinforces democracy by emphasizing the primacy of laws that are validly enacted by the legislative branch of government. Because democracies are ruled by law rather than by the exercise of arbitrary power, this lends legitimacy to democratic institutions of lawmaking and, by extension, to the democratic process.

Courts and judges, of course, play a key role in maintaining the rule of law. It goes without saying that the rule of law requires a robust and independent judiciary. An effective judicial system inhibits both the state and private parties from acting arbitrarily. This helps promote social stability, progress and prosperity. An independent judiciary is necessary to provide definitive judgments on the interpretation of the law and how it is applied to particular disputes.

At the same time, under the rule of law, judges themselves are also subject to the law. This principle extends beyond their personal lives and professional conduct and encompasses their decision making, where judges are required to apply laws which are duly passed by legislatures—as long as there are no concerns about constitutional validity.

This is the case even though the judge may not agree with the legislation in question or with the result dictated by the application of the legislation.

Maintaining the rule of law is not the sole preserve of the judiciary or of the executive or of the legislature. Rather, it involves all three branches of government working interdependently, if not collectively.

It is an endeavour that demands a high degree of mutual respect between the different branches

of government. Together, all branches have a responsibility to promote understanding of and respect for their various and multifaceted roles in preserving and promoting the rule of law.

But the preservation of the rule of law depends on more than respect between the branches of government—it also depends on the respect of citizens for the branches of government.

Ultimately, the rule of law can only flourish in a society where there is public confidence in the operation of legal and legislative institutions. And so, to maintain that confidence, all branches of government must strive to be relevant and responsive to the demands and aspirations of the public that we serve.

However, there is also a time for us to look beyond the public we serve. Organizations such as the Commonwealth Magistrates' and Judges' Association remind us that preserving and promoting the rule of law is necessary throughout the world, and not only within our own individual nation states.

I am well aware that the judiciary in Canada have taken on this challenge in various ways. Most directly, a number of Canadian judges have become involved in international projects to promote the rule of law in new democracies, such as those offered through the Canadian section of the International Commission of Jurists.

Canadian judges bring to the table their experience of how the rule of law promotes stability and prosperity in our own society and have used that experience to assist new democracies in their efforts to move forward.

But it is important to recognize that efforts such as these are not just opportunities to teach. They are also opportunities to learn. When Canadian judges take part in international projects, they impart their wisdom, but they also learn from the wisdom of others. They see how justice systems work in entirely different geographic and cultural contexts and incorporate those experiences into their own professional lives.

I can speak from experience in this regard, as I have travelled widely in a number of countries. From this, I can say emphatically that promoting the rule of law around the world is essential to the stability and prosperity of all nations.

I thank you very much and wish you every success in your discussions and deliberations this week.

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